

On August 29, 2007 the Office advised appellant of the factual and medical evidence needed to establish his claim and allowed him 30 days to submit such evidence.

Appellant submitted an April 19, 2007 health care provider form of Dr. Natalia Alexandrova, a Board-certified neurologist, who noted that appellant's chronic low back pain worsened "recently." Dr. Alexandrova also noted that appellant had a laminectomy at L4-5 in November 2005. In a work restriction form of the same date, she advised that appellant could return to work with no lifting over 10 pounds and no bending. In a July 24, 2007 report, Dr. Michael Pistole, a Board-certified internist, noted that appellant had been incapacitated from normal work duties since April 5, 2007 after lifting equipment at work beyond his weight capacity on April 4, 2007. He noted that appellant had lower back issues prior to April 4, 2007, but had been able to perform light-duty functions. In a July 25, 2007 medical information form, Dr. Pistole diagnosed severe low back pain due to chronic and acute back injuries. On April 11, 2007 Dr. Raul Mandler, a Board-certified neurologist, issued a work restriction form stating that appellant's medical condition precluded him from lifting at work.

In an October 31, 2007 decision, the Office denied appellant's claim for compensation finding that due to factual inconsistencies the evidence did not establish how appellant was injured. It also found the medical evidence insufficient to establish that the April 4, 2007 work injury caused a specific medical condition.

On January 31, 2008 appellant requested reconsideration. In support of his request, appellant submitted medical evidence from several physicians. In an undated Form CA-20, attending physician's report, Dr. Pistole noted that appellant lifted batteries and hurt his back. He indicated evidence of preexisting back problems and that appellant had recently undergone low back surgery. Dr. Pistole diagnosed chronic back pain and neuropathy due to the back injury. He checked a box "yes" indicating that appellant's condition was caused or aggravated by his employment activity. Dr. Pistole indicated that appellant underwent surgery in September 2007. In May 2 and June 13, 2007 reports, Dr. Daniel Kendall, an osteopath Board-certified in anesthesiology, noted treating appellant's low back symptoms with epidural steroid injections.

On June 14, 2007 Dr. Aldo Rosemblat, a Board-certified neurosurgeon, noted appellant's complaint of chronic low back pain with pain radiating down both lower extremities and numbness in the left leg and foot. He stated that appellant's condition was work related and started on April 4, 2007 in the course of employment. Dr. Rosemblat noted appellant's previous lumbar laminectomy in November 2005. He also noted that previous diagnostic tests revealed advanced disc degeneration at L2-3, L3-4 and L4-5 as well as diffuse disc protrusion at L5 and S1. In a June 19, 2007 diagnostic report, Dr. Joseph Backer, a Board-certified diagnostic radiologist, diagnosed degenerative disc disease of the cervical spine with moderate spinal stenosis at C5-6 that did not appear to compress the spinal cord.

On September 7, 2007 appellant underwent surgery for his low back. In an operative report of that date, Dr. Bothwell Lee, a Board-certified neurosurgeon, diagnosed lumbar degenerative disc disease, lumbar radiculopathy, lumbar disc herniation, status post lumbar laminectomy and cervical degenerative disc disease. He noted performing a decompressive lumbar laminectomy, recurrent, at L4, L5 and S1. The third and final page of the surgical report is not of record. In a September 12, 2007 discharge summary report, Dr. Faisal Siddiqui, a Board-certified orthopedic surgeon and an associate of Dr. Lee, diagnosed lumbar stenosis with lumbar degenerative disc disease.

A November 1, 2007 report of the Spine Care Center indicated that appellant sustained an injury to his back from lifting batteries at work on April 5, 2007. It noted appellant's history of back surgery in 2005 and on September 7, 2007. The report indicated that the September 7, 2007 surgery revealed significant scar tissue and inflammation damage consistent with the findings, out of proportion to what one would expect, directly related to the lifting injury sustained on April 4, 2007. It diagnosed lumbar stenosis and scarring resulting from the injury sustained from the lifting accident, delineated in L4, L5 and S1. The report noted that appellant had a fairly severe medical disability and could not return to regular duty given the amount of scar tissue sustained from the injury. The report contains an illegible signature with "MD" noted below it.¹

On November 9, 2007 Dr. Louis Ziegler, a chiropractor, evaluated and treated appellant for pain after his laminectomy. He noted appellant's claim that his symptomology began after being involved in a work accident. Appellant also submitted several medical reports and physical therapy notes that predate the April 4, 2007 work incident, including a November 23, 2005 operative report indicating that appellant underwent a lumbar laminectomy at L3, L4 and L5.

On April 18, 2008 the Office advised appellant that additional evidence was needed to establish his claim. In particular, it requested medical evidence pertaining to appellant's preexisting back condition and his motorcycle accident of June 2006. Appellant submitted medical reports pertaining to treatment received for his head and right lower extremity injury sustained in a motorcycle accident on June 9, 2006.

In a September 4, 2008 decision, the Office denied modification of its October 31, 2007 decision. It found that, while appellant established that an incident in the performance of duty occurred on April 4, 2007, there was insufficient medical evidence to establish a diagnosis related to his work incident.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.³

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The

¹ On appeal, appellant asserted that the report's signature was from his treating physician, Dr. Siddiqui.

² *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *John J. Carlone*, 41 ECAB 354 (1989).

³ *John J. Carlone*, *supra* note 2.

opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

The evidence supports that appellant was lifting batteries on April 4, 2007 as alleged. However, he has not submitted sufficient medical evidence establishing that the April 4, 2007 incident caused or aggravated his diagnosed lumbar condition.

On November 1, 2007 a Spine Care Center report noted that appellant sustained a back injury from lifting batteries at work. It diagnosed lumbar stenosis and scarring as a result of the lifting injury. The report concluded that appellant's surgery revealed significant scar tissue and inflammation damage out of proportion to what one would expect and directly related to the April 4, 2007 work incident. The report contained an illegible signature, which appellant asserted belonged to Dr. Siddiqui. However, the report's letterhead did not list Dr. Siddiqui's name or the names of any other physicians. Additionally, no other evidence of record contains Dr. Siddiqui's signature to authenticate the signature on the November 1, 2007 report. The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8102(2), and reports lacking proper identification do not constitute probative medical evidence.⁵ Furthermore, Dr. Lee's September 7, 2007 surgical report is not relevant as it is incomplete, consisting of only the first two pages of a three-page report, and does not otherwise address whether appellant's condition is employment related. Additionally, Dr. Siddiqui's September 12, 2007 discharge summary report⁶ diagnosed lumbar stenosis with lumbar degenerative disc disease; however, it failed to state an opinion as to how appellant's low back condition was caused or aggravated by the April 4, 2007 incident.⁷

On June 14, 2007 Dr. Rosemlat noted appellant's complaint of chronic low back pain. He indicated that appellant's condition was work related and began on April 4, 2007 in the course of his employment. Dr. Rosemlat interpreted diagnostic tests finding advanced disc degeneration and diffuse disc protrusion. He broadly opined, however, that the work incident caused appellant's low back condition but did not specifically explain how the April 4, 2007

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See R.M.*, 59 ECAB ____ (Docket No. 08-734, issued September 5, 2008) (where the Board supported the authenticity of the evidence that contained earlier medical reports, signed by the physician and submitted on his letterhead); *see also D.D.*, 57 ECAB 734 (2006) (medical reports lacking proper identification cannot be considered as probative evidence in support of a claim).

⁶ This report is electronically signed.

⁷ *See K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

incident caused or aggravated appellant's back condition nor did he address how appellant's preexisting low back condition may have impacted his condition.⁸

Dr. Pistole's undated Form CA-20 noted that appellant injured his back while lifting. He diagnosed chronic back pain and neuropathy. Dr. Pistole also checked a box "yes" indicating that appellant's condition was caused or aggravated by an employment activity. Without medical rationale, this opinion has little probative value and is insufficient to establish a causal relationship.⁹ Additionally, on July 24, 2007 Dr. Pistole advised that appellant had been incapacitated after lifting equipment at work. He diagnosed severe low back pain. However, without medical reasoning explaining how the lifting at work caused or contributed to a diagnosed medical condition, the report is of limited probative value.¹⁰

The other medical reports of record do not specifically support that the April 4, 2007 work incident caused or aggravated appellant's low back condition. Consequently, appellant has not submitted sufficient medical evidence to establish a causal relationship between his lumbar condition and the April 4, 2007 work incident.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a traumatic injury on April 4, 2007 in the performance of duty.

⁸ See *William C. Thomas*, 45 ECAB 591 (1994) (medical reports consisting solely of conclusory statements without supporting rationale are of little probative value).

⁹ See *Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value).

¹⁰ See *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated September 4, 2008 and October 31, 2007 are affirmed.

Issued: April 16, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board